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PTO/SB/64 (10-00)
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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)
1400.9801210

First named inventor: **Hebert, et al.**

Application No.: 09/295,818

Group Art Unit: 2771

Filed: 04-21-99

Examiner: Unknown

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OFFICE OF PETITIONS

Title: **METHOD AND APPARATUS FOR PROVIDING RELIABLE INTEROPERATION
OF A PLURALITY OF INDEPENDENT SOFTWARE MODULES**

Attention: Office of Petitions
Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

NOTE: If information or assistance is needed in completing this form, please contact Petitions
Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a
notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the
expiration date of the period set for reply in the Office notice or action plus an extensions of time
actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee --required for all utility and plant applications
filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

☐ Small entity-fee \$_____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

☒ Other than small entity - fee \$ 1,240.00 (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in
the form of Declaration for Utility or Design Patent Application (identify type of reply)

- ☐ has been filed previously on _____
☒ is enclosed herewith.

B. The issue fee of \$_____

- ☐ has been paid previously on _____
☐ is enclosed herewith.

[Page 1 of 2]

Burden Hour Statement: This form is estimated to take 1.0 hour to complete. Time will vary depending upon the needs of the individual case. Any comments on
the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC
20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

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3. Terminal disclaimer with disclaimer fee

- ☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- ☐ A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

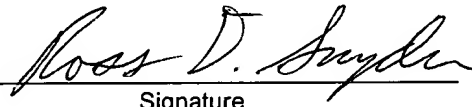
4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c)(III)(C) and (D))].

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

August 13, 2001

Date

Telephone
Number: (512) 347-9223



Signature

Ross D. Snyder, Reg. No. 37,730

Typed or printed name

115 Wild Basin Road, Suite 107

Address

Austin, TX 78746

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Enclosures: ☒ Fee Payment

☒ Reply

☐ Terminal Disclaimer Form

☒ Additional sheets containing statements establishing unintentional delay

☐ Other: _____

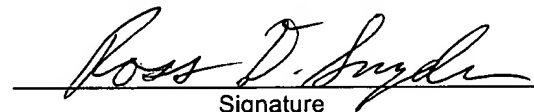
CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

- ☐ deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Box DAC, Washington, D.C. 20231.
- ☒ deposited with the USPS "Express Mail Post Office to Addressee" service on the date shown below and is addressed to the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231
- ☐ transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 308-6916.

August 13, 2001

Date



Signature

Ross D. Snyder, Reg. No. 37,730

Type or printed name of person signing certificate



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Hebert, et al.

Title: METHOD AND APPARATUS FOR PROVIDING RELIABLE
INTEROPATION OF A PLURALITY OF INDEPENDENT
SOFTWARE MODULES

App. No.: 09/295,818

Filed: 04-21-99

Examiner: Unknown

Group Art Unit: 2771

Atty. Dkt. No. 1400.9801210

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Assistant Commissioner for Patents
Washington, D.C. 20231

OFFICE OF PETITIONS

**ADDITIONAL INFORMATION PERTAINING TO PETITION FOR
REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNINTENTIONALLY UNDER 37 C.F.R. § 1.137(b)**

Dear Sir:

On May 17, 1999, Applicant (or Applicant's representative) received a Notice to File Missing Parts of Application – Filing Date Granted mailed on May 12, 1999, stating that the oath or declaration is missing. On June 22, 2000, Applicant (or Applicant's representative) received a Notice of Incomplete Nonprovisional Application stating that the specification was missing. However, Applicant (or Applicant's representative) was aware that a complete specification including at least one claim as prescribed by 35 U.S.C. § 112 had been filed on April 21, 1999. Also, on June 22, 2000, Applicant received a replacement filing receipt confirming a filing date of April 21, 1999.

Applicant (or Applicant's Representative) was unable to obtain execution of the Declaration by inventors Vieregge and Brookes, the Assignment by inventors Vieregge and Brookes, or the Assignment by CrossKeys Systems Corporation until February 2001. On February 21, 2001, Applicant (or Applicant's Representative) received a Notice of Abandonment under 37 CFR 1.53 (f) or (g) for failure to timely or properly reply to the Notice to File Missing Parts mailed on May 12, 1999. Applicant now has obtained a Declaration and Assignment executed by inventors Vieregge and Brookes and an Assignment executed by CrossKeys Systems Corporation and may now reply to the Notice to File Missing Parts.

MPEP § 711.03(c), under heading III.C.1. states the following regarding unintentional delay:

The legislative history of Public Law 97-247, § 3, 96 Stat. 317 (1982), reveals that the purpose of 35 U.S.C. 41(a)(7) is to permit the Office to have more discretion than in 35 U.S.C. 133 or 151 to revive abandoned applications in appropriate circumstances, but places a limit on this discretion stating that "[u]nder this section a petition accompanied by [the requisite fee] would not be granted where the abandonment or the failure to pay the fee for issuing the patent was intentional as opposed to being unintentional or unavoidable." H.R. Rep. No. 542, 97th Cong., 2d Sess. 6-7 (1982), reprinted in 1982 U.S.C.C.A.N. 770-71. A delay resulting from a deliberately chosen course of action on the part of the applicant is not an "unintentional" delay within the meaning of 37 CFR 1.137(b).

Where the applicant deliberately permits an application to become abandoned (e.g., due to a conclusion that the claims are unpatentable, that a rejection in an Office action cannot be overcome, or that the invention lacks sufficient commercial value to justify continued prosecution), the abandonment of such application is considered to be a deliberately chosen course of action, and the resulting delay cannot be considered as "unintentional" within the meaning of 37 CFR 1.137(b). See *In re Application of G*, 11 USPQ2d 1378, 1380 (Comm'r Pat. 1989). An intentional course of action is not rendered unintentional when, upon reconsideration, the applicant changes his or her mind as to the course of action that should have been taken. See *In re Maldague*, 10 USPQ2d 1477, 1478 (Comm'r Pat. 1988).

A delay resulting from a deliberately chosen course of action on the part of the applicant does not become an "unintentional" delay within the meaning of 37 CFR 1.137(b) because:

- (A) the applicant does not consider the claims to be patentable over the references relied upon in an outstanding Office action;
- (B) the applicant does not consider the allowed or patentable claims to be of sufficient breadth or scope to justify the financial expense of obtaining a patent;
- (C) the applicant does not consider any patent to be of sufficient value to justify the financial expense of obtaining the patent;
- (D) the applicant does not consider any patent to be of sufficient value to maintain an interest in obtaining the patent; or

(E) the applicant remains interested in eventually obtaining a patent, but simply seeks to defer patent fees and patent prosecution expenses.

Likewise, a change in circumstances that occurred subsequent to the abandonment of an application does not render "unintentional" the delay resulting from a previous deliberate decision to permit an application to be abandoned. These matters simply confuse the question of whether there was a deliberate decision not to continue the prosecution of an application with why there was a deliberate decision not to continue the prosecution of an application.

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In view of the above, the abandonment of the present application was unintentional. At no time from the filing of the application to the present time has the Applicant (or the Applicant's representative) intentionally or deliberately abandoned the application or taken any action or had any state of mind that would bar the applicability of the provisions for revival of an abandoned application set forth in 37 C.F.R. § 1.137(b). The Applicant has, at every point in time from the filing of the application to the present time, intended to prosecute the present application. However, as noted above, due to circumstances beyond Applicant's (or Applicant's representative's) control, Applicant was unable to obtain a declaration executed by all of the inventors. Because of the nature of the relationship between the various inventors and assignors and the assignee and the ethical constraints imposed thereon, it was not possible to assert facts sufficient to satisfy the provisions of 35 U.S.C. §§ 116 and 118 to allow the requirement of an executed declaration to be obviated. Therefore, Applicant was unable to proceed with prosecution of the present application, and the Commissioner determined the present application to be abandoned. Now that a fully executed declaration and fully executed assignments have been obtained, Applicant is able to file these documents.

Additionally, Applicant (or the Applicant's representative) notes that the present application was not filed before June 8, 1995. Therefore, granting the accompanying petition for revival of the present application will not change the expiration date of any patent that might issue from the expiration date that would have applied had the unintentional abandonment not occurred. Thus, Applicant (or the Applicant's representative) notes that no unjust extension of patent term could occur as a result of granting the accompanying petition for revival of the present application.

In view of the above, Applicant (or the Applicant's representative) respectfully requests that the accompanying petition for revival of the present application be granted.

Respectfully submitted,

Date

13 August 2001

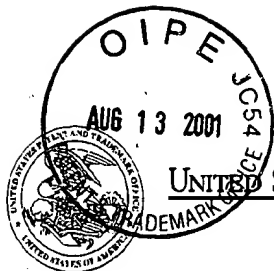
Ross D. Snyder

Ross D. Snyder, Reg. No. 37,730
Attorney for Applicant(s)
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UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/295,818	04/21/1999	MARTIN HEBERT	1400.9801210

Paul M. Anderson
Markison & Reckamp
115 Wild Basin Road
Suite 107
Austin, TX 78746

ABANDONMENT/TERMINATION
LETTER

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Date Mailed: 02/12/2001

NOTICE OF ABANDONMENT UNDER 37 CFR 1.53 (f) OR (g)

The above-identified application is abandoned for failure to timely or properly reply to the Notice to File Missing Parts (Notice) mailed on 05/12/1999.

- No reply was received.


A petition to the Commissioner under 37 CFR 1.137 may be filed requesting that the application be revived.

Under 37 CFR 1.137(a), a petition requesting the application be revived on the grounds of **UNAVOIDABLE DELAY** must be filed promptly after the applicant becomes aware of the abandonment and such petition must be accompanied by: (1) an adequate showing of the cause of unavoidable delay; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(l); and (4) a terminal disclaimer if required by 37 CFR 1.137(c).

Under 37 CFR 1.137(b), a petition requesting the application be revived on the grounds of **UNINTENTIONAL DELAY** must be filed promptly after applicant becomes aware of the abandonment and such petition must be accompanied by: (1) a statement that the entire delay was unintentional; (2) the required reply to the above-identified Notice; (3) the petition fee set forth in 37 CFR 1.17(m); and (4) a terminal disclaimer if required by 37 CFR 1.137(c).

Any questions concerning petitions to revive should be directed to "Office of Petitions" at (703) 305-9282.

*A copy of this notice **MUST** be returned with the reply.*


Customer Service Center
Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE